

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BETTY G. HOUSKE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 184,477
<b>JOHNSON COUNTY LIBRARY</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent requested review of the Award dated October 1, 1997, entered by Assistant Director Brad E. Avery.

**APPEARANCES**

Denise E. Tomasic of Kansas City, Kansas, appeared for the claimant. Eric T. Lanham of Kansas City, Kansas, appeared for the respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Assistant Director awarded claimant permanent partial general disability benefits for a 23 percent whole body functional impairment. Respondent requested the Appeals Board to review the issue of whether claimant's accident arose out of her employment. Respondent contends claimant fell because of a personal risk and, therefore, the accident did not result from any risk associated with claimant's employment. Claimant has requested the Appeals Board to order payment of interest pursuant to K.S.A. 44-512b because she contends the respondent lacked just cause and excuse for failing to pay compensation before the final award.

**FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds as follows:

The Award should be affirmed.

- (1) While working for respondent as a library clerk, claimant fell and fractured her hip. The accident occurred on October 29, 1993. In its brief to the Appeals Board, respondent concedes the accident occurred in the course of claimant's employment.
- (2) The parties stipulated claimant's average weekly wage on the date of accident was \$378.88. The parties have also stipulated claimant sustained a 23 percent whole body functional impairment as a result of the injury.
- (3) Claimant fell while walking around the library circulation desk where the floor surface changes from carpet to linoleum. Although she cannot be certain, claimant believes she fell because she tripped on a metal strip that separates the carpet and linoleum.
- (4) Claimant was 69 years old at the time of the accident. Although she had arthritis in her right knee and back before the fall, there is no history or medical evidence that her preexisting condition caused her to fall either on October 29, 1993, or at any other time.
- (5) A courier employed by the respondent was within several feet of claimant when she fell. He testified at the preliminary hearing held in February 1994 that claimant appeared to have stumbled and immediately grabbed for the circulation desk as she fell which caused her to twist.

**CONCLUSIONS OF LAW**

- (1) Only those injuries which arise out of and in the course of employment are compensable under the Workers Compensation Act. Because respondent concedes claimant's accident occurred in the course of employment, the only question which remains is whether the accident arose out of claimant's employment with respondent. Respondent contends it is more probable that claimant fell as a result of either her arthritis or some unknown reason unrelated to the employment.

When considering the entire record, the Appeals Board finds that it is more probably true than not that claimant tripped and fell as a direct result of the condition of the premises and, therefore, claimant's accident arose out of her employment.

Respondent presented the testimony of an accident reconstruction expert who testified that claimant probably collapsed rather than stumbled. Despite that expert opinion, the Appeals Board finds the testimony of respondent's courier, Michael Austin, much more persuasive regarding what actually occurred. The Appeals Board questions

whether the reconstruction expert considered the fact that claimant grabbed for the circulation desk as she tripped which caused her to twist as she fell to the floor.

Regarding claimant's objection to the testimony of respondent's reconstruction expert, the Appeals Board finds the deposition should be admitted as part of the evidentiary record as the objection goes to the weight the testimony should be given.

(2) Claimant's request for an award of interest pursuant to K.S.A. 44-512b should be denied. Before interest may be awarded there must be an absence of just cause or excuse for failing to pay benefits before the award. Here, the respondent had a legitimate argument in its defense and, therefore, just cause for not paying benefits. Because preliminary hearing findings are not binding and may be modified upon a full hearing of the claim, respondent continued to have a legitimate argument in defense of the claim even after receiving an adverse preliminary hearing ruling.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated October 1, 1997, entered by Assistant Director Brad E. Avery should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Denise E. Tomasic, Kansas City, KS  
Eric T. Lanham, Kansas City, KS  
Brad E. Avery, Assistant Director  
Philip S. Harness, Director